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NOTES.

CORPORATIONS—PAYMENT TO A DIRECTOR TO LOOK AFTER PARTICULAR INTERESTS—Is an agreement, made by a person having the right to nominate a director in a corporation, to pay compensation to that director for so acting, enforceable? This question arose in a recent English case, and the Supreme Court of Judicature by a divided bench, decided it in the affirmative.[1]

A corporation in financial difficulties applied to the defendant, a financier, to come to its assistance by supplying additional capital in payment of shares therein. He agreed to do so on condition that he be given two representatives on the board. The agreement with this condition was approved and ratified at a general meeting of shareholders. The defendant thereupon advanced the capital and appointed the plaintiff to act as representative with him on the board to look after his interests. He promised to pay the plaintiff for his

[1] Kregor v. Hollins, 109 L. T. Rep. 225 (1913).

services two hundred pounds a year as long as he remained director, and told him to see to it that the directors did not draw any fees from the company. Neither the directors nor the company knew of this private arrangement between the plaintiff and the defendant. After acting as the defendant's representative for a year and a half, the plaintiff resigned. He sued the defendant for compensation in accordance with their agreement. The defense was that the agreement was illegal, as it might have been used by the plaintiff against the interest of the company, his principal. The jury found that the agreement did not contemplate that the plaintiff should promote the interests of the defendant even though they were not identical with those of the company.

Opposed to the strong dissent of Lord Justice Vaughan Williams, the two other judges came to the conclusion that the agreement was not illegal or secret. They decided that when, at the general meeting, the shareholders approved the contract with the defendant, they also in effect gave their approval to any arrangements that might naturally arise under the contract for the purpose of giving effect to it. An arrangement to pay the plaintiff a salary was such as should have been contemplated, since the plaintiff was, at the defendant's request, performing services for him. The majority judges did not consider the agreement to pay the plaintiff a bribe to induce him to do anything wrong, but rather a payment for services rendered at defendant's request for the benefit of the company.

The dissenting Justice held that it was error for the court to have submitted to the jury the question as to whether the parties had contemplated that the plaintiff should look after the defendant's interests even where in conflict with those of the company. "In my opinion, if the agreement was such that it might possibly be employed to the detriment of the shareholders at large, one must not speculate as to whether in its application the plaintiff intended to use it for such purpose. . . . And I think that the question whether the agreement was illegal, or, in other words, inconsistent with the duty of the other director as trustee for the company, is a question of law and not of fact." He comes to the conclusion that this arrangement viewed in this manner was illegal, as a matter of law.

On the questions as discussed by the court, there are certain well-recognized rules as to the receipt of secret profits, gratuities, *etc.*, by a director of a corporation.[2] The doctrine in equity that a trustee will not be permitted, without the knowledge and consent of his *cestui que trust,* to speculate out of his trust or to retain any gain or secret profits which may have accrued to him personally from the trust relation, is applied with full force to directers of corporations.[3]

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[2] See 2 Thompson on Corporations, §1234, *et seq.*

[3] Robertson v. Bucklen & Co., 107 Ill. App. 360 (1903); Parker v. Nickerson, 112 Mass. 195 (1873); Barnes v. Brown, 80 N. Y. 527 (1880); Simons v. Vulcan Oil Co., 61 Pa. 202 (1869).

In accordance with this rule a corporation may compel a director to account to it for gains or secret profits resulting from contracts or dealings of third persons with the corporation.[4]

In such case, the director cannot interpose as his defense the fact that the transaction in which he made the secret profits was also of advantage to the corporation.[5] A director must likewise account for and surrender to the corporation any gifts, gratuities or bribes received by him for the purpose of influencing his official action in a matter pending before the board.[6]

Where, however, the profits are not secret nor illegal, there is no such obligation on the part of the director to account to the corporation. If, therefore, the director acts *bona fide* and honestly, and all the facts of the contract or transaction are known to the board of directors, who are informed of his connection with it, and such contract or transaction is advantageous to the corporation, he may retain such profits, provided, also, that his vote was not essential to complete the contract or transaction.[7] *A fortiori,* he may retain such profits if the stockholders are fully acquainted with all the facts and ratify the contract or transaction.[8]

The principal case can therefore be explained on the reasoning of the majority of the court,—that the arrangement between the plaintiff and defendant was contemplated by the stockholders when they ratified the agreement to give the defendant two representatives on the board of directors. In such case, the arrangement was not a breach of the duty which the plaintiff owed to his principal, the corporation; but it was rather within the purview of the original agreement.

N. I. S. G.

EQUITY JURISDICTION—MULTIPLICITY OF SUITS—The courts are not unanimous as to whether equity has jurisdiction to enjoin the prosecution of numerous actions arising out of the same tortious act,

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[4] Loudenslager v. Woodbury, *etc.,* Co., 56 N. J. E. 411 (1897); Coombs v. Barker, 31 Mont. 526 (1905); Perry v. Tuskaloosa, *etc.,* Co., 93 Ala. 364 (1890).

[5] Bird Coal & Iron Co. v. Humes, 157 Pa. 278 (1893); Parker v. Nickerson, *supra,* n. 3.

[6] Campbell v. Cypress Hill Cemetery, 41 N. Y. 34 (1865); *In re* Caerphilly Colliery Co. (Pearson's Case), L. R. 5 Ch. D. 336 (Eng. 1877); 2 Thompson on Corporations, §1237, *et seq.*

[7] Kregor v. Hollins, *supra;* Nathan v. Whitehill, 67 Hun. 398 (N. Y. 1893); Burland v. Earle, 85 L. T. 553 (Eng. 1902); Pneumatic Gas Co. v. Berry, 113 U. S. 322 (1885).

[8] *In re* British, *etc.,* Box Co., L. R. 17 Ch. D. 467 (Eng. 1881); Tenison v. Patton, 95 Tex. 284 (1902).